

UT 07-5

Tax Type: Use Tax

Issue: Private Vehicle Use Tax – Nonresident

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

John & Jane Doe

**No. 00 ST 0000
MV no. 000000000
NTL: 00 0000000000000**

**Mimi Brin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Stephen Lewis of Cook & Lewis Ltd on behalf of John and Jane Doe; Mr. George Foster, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to John and Jane Doe's (hereinafter "Does" or the "Taxpayers") protest of a Notice of Tax Liability number 00 0000000000000 (hereinafter "NTL") issued by the Illinois Department of Revenue (hereinafter the "Department") for Motor Vehicle Use Tax based upon the Does' purchase of a 2003 Discovery mobile home type of motor vehicle (hereinafter "motor vehicle"). At the time of the purchase, the Does were issued a drive-away permit. They did not pay any use tax to Illinois on the purchase based upon their position that they were not Illinois residents at that time, and, therefore, were exempt from the payment of

any such tax. At the hearing held in this matter, John Doe (hereinafter “T. Doe”) and Jane Doe (hereinafter “P. Doe”) testified and documentary evidence was offered for each party. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the taxpayers. In support of this recommendation, I make the following findings of facts and conclusions of law:

Findings of Fact:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tax Liability number 00 0000000000000, showing a tax liability of \$7,973 with additional interest calculated through January 25, 2007.
Department Ex. No. 1
2. On June 20, 2003, taxpayers purchased a 2003 Discovery mobile home type motor vehicle from RV, an Illinois retailer. Taxpayers Ex. No. 8 (ST-556 Sales Tax Transaction Return)
3. At the time of purchase, taxpayers represented that their address was Sioux Falls, South Dakota. Id.
4. At the time of the purchase, the retailer issued to the Does a drive-away permit for the motor vehicle showing taxpayers’ address as Sioux Falls, South Dakota. Taxpayers Ex. No. 6 (Drive-Away Permit)
5. As of June 6, 2003, John Doe had a valid driver’s license issued by the state of South Dakota showing an address of Sioux Falls, South Dakota. Taxpayers Ex. No. 1 (South Dakota Operator License)

6. P. Doe did not change her driver's license from Illinois until sometime in 2004. Tr. p. 57 (P. Doe)
7. On June 24, 2003, the Does applied for and received a motor vehicle title & registration from South Dakota for the motor vehicle as well as for their two other automobiles. Taxpayers Ex. Nos. 3, 4, 5 (State of South Dakota Applications for Motor Vehicle Title & Registration), 7 (South Dakota Vehicle Registrations), 9, 10, 11 (Certificates of Title)
8. Taxpayers paid tax on their purchase of the motor vehicle to the state of South Dakota at the time they applied for title and registration. Taxpayers Ex. No. 5
9. Each application, registration and certificate of title shows the address for the taxpayers as Sioux Falls, South Dakota. Id.
10. On or about June 3, 2003, T. Doe was advised by his employer that he was permanently assigned to work in Iowa. Tr. pp. 18, 52 (T. Doe)
11. On June 20, 2003 he was living in a hotel in North Sioux City, South Dakota, a mile from where he was permanently assigned to work in Iowa. Tr. p. 38 (T. Doe)
12. Immediately upon completing the purchase of the motor vehicle the Does, together, left Illinois and lived in the motor vehicle in a campground in South Dakota until they purchased a home in South Dakota in October, 2003. Transcript ("Tr.") pp. 39-40, 41, 42, 45, 54 (T. Doe), 58 (P. Doe)
13. On June 20, 2003 and for a number of months thereafter, the Does owned a home in Illinois, to which T. Doe returned three times for about a day

and a half, and to which P. Doe four or five times, for several days each time, for the sole purpose of preparing it for sale. Tr. pp. 47, 48 (T. Doe), 58, 60 (P. Doe)

14. Taxpayers' filed an Illinois income tax return, IL-1040, for the tax year ending 12/31/03, as a part-year resident of Illinois from 1/1/03 to 8/30/03. Department Ex. No. 2 (transcript of 2003 IL-1040)

Conclusions of Law:

Pursuant to Article X of the Illinois Vehicle Code, 625 **ILCS** 5/1-100 et seq. (hereinafter the "Code"), a Vehicle Use Tax is imposed "on the privilege of using, in this State, any motor vehicle ...acquired by gift, transfer, or purchase". 625 **ILCS** 5/3-1001. The Code incorporates, for purposes including our considerations here, provisions of the Illinois Use Tax Act, 35 **ILCS** 105/1 et seq. (hereinafter the "Act") which, in turn, exempts from the imposition of Illinois use tax, motor vehicles, such as the one at issue, if the motor vehicle is sold in this State to a nonresident and delivered to the nonresident in this State but the motor vehicle is not to be titled in Illinois and if a drive-away permit is issued to the vehicle. Id. at 105/3-55(h).

The taxpayers defend against the NTL be averring that at the time of their purchase of the motor vehicle, they were residents of South Dakota, and, in fact, as soon as they completed this purchase, they left Illinois in the vehicle and lived in it as their home until they purchased another home in South Dakota. They argue, inter alia, that it was their intent at the time of purchase to be residents of South Dakota and not Illinois.

The Department argues that they were residents of Illinois at the time of the purchase and they remained Illinois residents well into 2003 because they did not sell their home in Illinois until October, 2003, P. Doe maintained an Illinois drivers license until sometime in 2004 and taxpayers' 2003 IL-1040 showed that they were part-year residents of Illinois until 8/30/03.

Thus, the issue in this case is whether taxpayers were residents of South Dakota at the time of the purchase of the motor vehicle. It is first observed that the Illinois Vehicle Code defines "resident", in pertinent part, as "[E]very natural person who resides in this state shall be deemed a resident of this State." 625 ILCS 5/1-173. The Use Tax Act does not define "resident". The appellate court, in the case of Hatcher v. Anders, 117 Ill. App. 3d 236 (2nd Dist. 1983) discussed the meaning of the term "resident" for purposes of the Code. The court determined that for such purposes, the term "resident" is synonymous with "domicile". Id. at 239. Further, the court provided that:

[A] person can have only one domicile or permanent residence and once it is established it is retained until a new domicile is acquired. (citations omitted). Affirmative acts must be proved to sustain the abandonment of an Illinois residence and a temporary absence from the state, no matter how protracted, does not equate with abandonment. (citations omitted). To establish a new domicile, a person must physically go to a new home and live there with the intention of making it his permanent home. (citations omitted). Only when abandonment has been proven is residency lost. (citations omitted).

Id. Intent is a critical question in determining residency. Connelly by Connelly v. Gibbs, 112 Ill. App. 3d 257 (1st Dist. 1983).

In this matter, the taxpayers established, through competent documentary evidence supported by credible oral testimony, that at the time of their purchase of the motor vehicle, they intended to be and were residents of South Dakota and not of Illinois.

Almost immediately upon being advised that he was being permanently assigned to work in Iowa, John Doe obtained a South Dakota driver's license using an address in South Dakota. This address is that of a mail service that he had already established for purposes of receiving all of his mail. This is the same address that he used when he purchased the motor vehicle, again, shortly after being advised of his permanent change in work location. And, it is this very motor vehicle that he and his wife used as their actual housing directly following the completion of the purchase. This same South Dakota address was used by taxpayers to obtain registrations and titles for all of their motor vehicles, including the one at issue, and they applied for these new registrations within days of the purchase of the motor vehicle at issue. At the time of the purchase, the taxpayers intended to use the motor vehicle as their home, and they did so by living in it in a campsite in South Dakota until such time, months after the purchase, that they bought another home in that state.

It is true that Jane Doe did not change her driver's license to South Dakota until some time in 2004, when it had expired in Illinois, in contrast to her husband who obtained a South Dakota license within days of being advised of his permanent work transfer. I find her testimony that she just forgot about it to be credible and cannot conclude that this inaction on her part is sufficient to show that it was not her intent at the time of the purchase of the motor vehicle to have changed, permanently, her Illinois residence to South Dakota. I also cannot conclude that it was not taxpayers' intent to permanently move from Illinois on the date of the purchase of the motor vehicle because their 2003 IL-1040 reflected part-year residency in Illinois until August 2003. T. Doe's testimony that he received a permanent job transfer to the Iowa/South Dakota area before

that date was consistent with the other documents of record reflecting consistent actions on his part to effectuate a permanent residence away from Illinois. I concur with the Does that this information reflected on taxpayers' income tax return resulted from information submitted by T. Doe's employer that did not accurately reflect the facts of his specific permanent employment assignment (tr. pp. 29-31) and the fact that the Does were living in their motor vehicle in South Dakota, intending to make that their home from the time of the employment assignment months earlier. The purchase of the motor vehicle, and the fact that the taxpayers lived in it as their home, constituted their move from their Illinois home to a new one.

The Notice of Tax Liability admitted into evidence herein establishes, with *prima facie* correctness, the tax liability of this taxpayer in this matter. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). In order to overcome the presumption of validity attached to this Notice of Tax Liability, the taxpayer must produce competent evidence, identified with its books and records, showing that the Notice is incorrect. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes, *supra*. Taxpayers herein clearly and convincingly rebutted the *prima facie* correctness of the Department's NTL with credible documentary and oral evidence.

Wherefore, for the reasons stated above, I recommend that the Notice of Tax Liability at issue be cancelled.

9/25/07

Mimi Brin
Administrative Law Judge